A

Karpaya a/l Maliandy (acting through Genesan a/l Karuppiah, holder of valid power of attorney) v Kerisnan @ Krishnan a/l Malayaandy

B

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO B-02(NCVC)(W)-799–07 OF 2020
HANIPAH FARIKULLAH, AZIZAH NAWAWI AND HASHIM HAMZAH JJCA
C 20 OCTOBER 2021

Civil Procedure — Appeal — Appeal against decision of High Court — Whether trial judge erred in not admitting certified copy of birth certificate as evidence — Whether trial judge erred in finding that there was no fraud — Whether fraud was proven on a balance of probabilities — Whether appellate intervention was warranted

D

Evidence — Documentary evidence — Admissibility and relevancy — Appellant tendered certified copy of respondent's birth certificate — Whether document was relevant and admissible — Birth and Death Registration Act 1957 s 32 — Evidence Act 1950 s 35

E

F

This was an appeal against the decision of the High Court in dismissing the appellant's claim. One Muniamah a/p Rengasamy, a Malaysian citizen, died on the 29 July 1999 ('deceased'). During her lifetime, the deceased owned a piece of land measuring approximately five acres (2.0234 hectares) held under GM 969, No Lot 1430, Telok Penyamun, Mukim Pasangan, Daerah Kuala
G Selangor, Negeri Selangor Darul Ehsan ('said land') and 22 units of shares in Koperasi Kebangsaan Permodalan Tanah Bhd ('said shares'). The deceased died intestate and was allegedly survived by her three sons, namely the appellant, the respondent and another person by the name of Palaniandy. According to the appellant and the respondent, Palaniandy had died in India. After the
H deceased's death, the respondent had lodged a petition dated 8 November 2000 to the land administrator for the distribution of the deceased's estate pursuant to s 8 of the Small Estates (Distribution) Act 1955 (Revised 1972) (Act 98) ('the SEDA 1955'). On the 19 March 2001, the land administrator proceeded with the hearing of the respondent's petition and ordered the deceased's estate
I to be distributed solely to the respondent ('the said order'). The appellant was domiciled in India and was not in attendance at the hearing of the respondent's petition before the land administrator. It was evident during the trial that the appellant was not notified of the date of the hearing by both the respondent and the land administrator. Pursuant to the said order, the said land had been

transmitted to the respondent on 5 March 2006. The respondent is currently the sole registered owner of the said land. The appellant then initiated this action against the respondent through his son, Ganesan a/l Karuppiah ('SP3') by way of a power of attorney dated 15 September 2016. In the first instance, the appellant claimed that he was entitled to half of the deceased's estate, which had been wholly obtained by the respondent allegedly through fraud. In the midst of the trial before the High Court, the status of the respondent as one of the deceased's sons was disputed by the appellant. After the sixth witness for the appellant finished giving her evidence, the appellant applied to the High Court to amend his statement of claim. The appellant claimed to have only known that the respondent was not the son of the deceased through a recent search with the National Registration Department ('NRD'). The application was dismissed by the learned trial judge and the appellant appealed to the Court of Appeal. The Court of Appeal allowed the appeal hence the amendment to the appellant's statement of claim was allowed. On 8 September 2020, after full trial, the learned trial judge dismissed the appellant's claim with costs of RM40,000. Dissatisfied, the appellant filed this appeal against the said decision. The issues raised by the appellant on appeal were: (a) whether the trial judge erred both in law and in fact in not admitting the defendant's certificate of birth issued by the NRD ('ID22') as a court exhibit; and (b) whether the learned trial judge had erred both in law and in fact when he found that the said order was not obtained through fraud and was therefore not liable to be set aside.

Held, allowing the appeal with costs:

(1) ID22 was duly certified by the registrar-general of births and deaths as a true extract from the register of births. ID22 thus satisfied the statutory requirement under s 32(2) of the Births and Deaths Registration Act 1957 ('the BDRA 1957'). Therefore, ID22 which had been duly certified under s 32(2) of the BDRA 1957, shall be received as evidence of such facts and particulars relating to such birth without further or other proof (see paras 22 & 24).

(2) In addition, ID22 contained relevant facts which purportedly supported the appellant's assertions that the respondent was not the son of the deceased. The court therefore found that ID22 in the present case satisfied both the provision under s 32(1) and 32(2)(b) of the BDRA 1957. ID22 was also relevant to address the issue of whether the respondent was the son of the deceased pursuant to s 35 of the Evidence Act 1950. Therefore, the court found that ID22 was relevant and admissible as evidence of such facts and particulars relating to the respondent's birth (see paras 27–28).

(3) The court was of the view that the information given and the registration of the respondent's birth continued to be in force as if they had been given

or registered in accordance with the BDRA 1957. It was pertinent to note that ID22 was issued based on the register of births, which contained the said information and registration. ID22 was also issued and extracted on 30 October 2018 under the provisions of the BDRA 1957. Therefore, the court was of the considered view that the provisions under the BDRA 1957 was applicable to ID22 (see para 33).

(4) The court agreed with the appellant that the respondent had no interest in the deceased's estate. As such, the defendant had no locus standi to petition for the distribution of the deceased's estate under s 8 of the SEDA 1955 in the first place. There was clearly a misdirection on the part of the learned trial judge in not admitting the respondent's certificate of birth as a court exhibit and converting it from ID22 to P22. The decision of the learned trial judge was not based on proper judicial appreciation of evidence and was plainly wrong. There was no reason for the court not to accept ID22, a document introduced and tendered by an assistant registration officer from the NRD, as a court exhibit. The misdirection of the trial judge warranted appellate intervention by the court (see paras 38–39).

(5) The court found that from the trial judge's grounds of judgment, too much focus was given to the acts of the land administrator, ie SP5, whereas the allegation of fraud by the appellant in the present case was directed to the specific acts of the respondent. When all the evidence were viewed in totality, the court found that the respondent had clearly obtained the said order and subsequently the whole of the deceased's estate through fraudulent acts with the sole purpose of depriving the appellant of what he was duly entitled to. Therefore, the court found that the appellant had successfully proven, on the balance of probabilities, that the said order and the deceased estate were obtained through fraud on the part of the respondent. It was therefore only just for the said order to be set aside (see paras 44, 46 & 48).

[Bahasa Malaysia summary

Ini adalah rayuan terhadap keputusan Mahkamah Tinggi yang menolak tuntutan perayu. Muniamah a/p Rengasamy adalah seorang warganegara Malaysia yang telah meninggal dunia pada 29 Julai 1999 ('si mati'). Semasa hayatnya, si mati memiliki sebidang tanah seluas lebih kurang lima ekar (2.0234 hektar) yang dipegang di bawah hakmilik GM 969, No Lot 1430, Telok Penyamun, Mukim Pasangan, Daerah Kuala Selangor, Negeri Selangor Darul Ehsan ('tanah') dan 22 unit saham dalam Koperasi Kebangsaan Permodalan Tanah Bhd ('saham'). Si mati meninggal dunia secara tidak berwasiat dan telah meninggalkan tiga anak lelaki iaitu perayu, responden dan seorang lagi bernama Palaniandy. Menurut perayu dan responden, Palaniandy telah meninggal dunia di India. Selepas kematian si mati, responden telah mengemukakan petisyen bertarikh 8 November 2000 kepada pentadbir tanah

untuk pembahagian harta pusaka si mati menurut s 8 Akta Pusaka Kecil (Pembahagian) 1955 (Semakan 1972) (Akta 98) ('SEDA 1955'). Pada 19 Mac 2001, pentadbir tanah meneruskan pendengaran petisyen responden dan memerintahkan kesemua harta pusaka si mati diagihkan kepada responden ('perintah'). Perayu bermastautin di India dan tidak hadir semasa pendengaran petisyen responden di hadapan pentadbir tanah. Adalah terbukti semasa perbicaraan bahawa perayu tidak dimaklumkan mengenai tarikh perbicaraan oleh responden atau pentadbir tanah. Berdasarkan perintah, tanah tersebut telah diserahkan kepada responden pada 5 Mac 2006. Responden kini merupakan pemilik tunggal berdaftar tanah tersebut. Perayu kemudiannya memulakan tindakan ini terhadap responden melalui anaknya, Ganesan a/l Karuppiah ('SP3') melalui surat kuasa wakil bertarikh 15 September 2016. Pada peringkat pertama, perayu mendakwa bahawa dia berhak mendapat separuh daripada harta pusaka si mati, yang telah diperoleh sepenuhnya oleh responden melalui penipuan. Semasa perbicaraan di hadapan Mahkamah Tinggi, status responden sebagai salah seorang anak lelaki si mati telah dipertikaikan oleh perayu. Selepas saksi keenam perayu selesai memberikan keterangannya, perayu memohon kepada Mahkamah Tinggi untuk meminda pernyataan tuntutannya. Perayu mendakwa hanya mengetahui responden bukan anak kepada si mati melalui carian dengan Jabatan Pendaftaran Negara ('JPN') baru-baru ini. Permohonan itu telah ditolak oleh hakim bicara yang bijaksana dan perayu kemudiannya merayu kepada Mahkamah Rayuan. Mahkamah Rayuan membenarkan rayuan perayu dan pindaan kepada pernyataan tuntutan perayu. Pada 8 September 2020, selepas perbicaraan penuh, hakim bicara yang bijaksana menolak tuntutan perayu dengan kos RM40,000. Oleh kerana tidak berpuas hati, perayu memfailkan rayuan ini terhadap keputusan tersebut. Isu yang dibangkitkan oleh perayu semasa rayuan ialah: (a) sama ada hakim bicara terkhilaf dari segi undang-undang dan fakta apabila tidak menerima sijil kelahiran defendan yang dikeluarkan oleh JPN ('ID22') sebagai ekshibit mahkamah; dan (b) sama ada hakim bicara telah terkhilaf dari segi undang-undang dan fakta apabila menyatakan bahawa perintah tersebut tidak diperolehi melalui penipuan dan seterusnya tidak boleh diketepikan.

Diputuskan, membenarkan rayuan dengan kos:

(1) ID22 telah diperakui dengan sewajarnya oleh ketua pendaftar kelahiran dan kematian sebagai ekstrak sebenar daripada daftar kelahiran. ID22 dengan itu memenuhi keperluan statutori di bawah s 32(2) Akta Pendaftaran Kelahiran dan Kematian 1957 ('APKK 1957'). Oleh itu, ID22 yang telah diperakui dengan sewajarnya di bawah s 32(2) APKK 1957 hendaklah diterima sebagai bukti fakta dan butir-butir sedemikian yang berkaitan dengan kelahiran tersebut tanpa bukti lanjut atau bukti lain (lihat perenggan 22 & 24).

(2) Di samping itu, ID22 mengandungi fakta berkaitan yang kononnya

menyokong penegasan perayu bahawa responden bukanlah anak kepada si mati. Oleh itu mahkamah mendapati bahawa ID22 dalam kes ini memenuhi kedua-dua peruntukan di bawah s 32(1) dan 32(2)(b) APKK 1957. ID22 juga relevan untuk menangani isu sama ada responden adalah anak kepada si mati menurut s 35 Akta Keterangan 1950. Oleh itu, mahkamah mendapati bahawa ID22 adalah relevan dan boleh diterima sebagai bukti fakta dan butir-butir berkenaan dengan kelahiran responden (lihat perenggan 27–28).

(3) Mahkamah berpendapat bahawa maklumat yang diberikan dan pendaftaran kelahiran responden terus berkuat kuasa seolah-olah ia telah diberikan atau didaftarkan mengikut APKK 1957. Adalah penting untuk diambil perhatian bahawa ID22 dikeluarkan berdasarkan pada daftar kelahiran, yang mengandungi maklumat dan pendaftaran kelahiran tersebut. ID22 juga telah dikeluarkan dan diekstrak pada 30 Oktober 2018 di bawah peruntukan APKK 1957. Oleh itu, mahkamah berpendapat bahawa peruntukan di bawah APKK 1957 adalah terpakai untuk ID22 (lihat perenggan 33).

(4) Mahkamah bersetuju dengan perayu bahawa responden tidak mempunyai kepentingan dalam harta pusaka si mati. Oleh yang demikian, defendan tidak mempunyai locus standi untuk membuat petisyen bagi pembahagian harta pusaka si mati di bawah s 8 SEDA 1955. Hakim bicara yang bijaksana telah tersalah arah dengan tidak menerima sijil kelahiran responden sebagai ekshibit mahkamah dan menukarnya daripada ID22 kepada P22. Keputusan hakim bicara yang bijaksana itu tidak berdasarkan penghayatan kehakiman yang sewajarnya terhadap bukti dan telah terkhilaf. Tiada sebab untuk mahkamah tidak menerima ID22, dokumen yang diperkenalkan dan dikemukakan oleh penolong pegawai pendaftaran dari JPN, sebagai ekshibit mahkamah. Salah arah hakim bicara memerlukan campur tangan rayuan oleh mahkamah (lihat perenggan 38–39).

(5) Mahkamah mendapati bahawa daripada alasan penghakiman hakim bicara, terlalu banyak tumpuan diberikan kepada tindakan pentadbir tanah iaitu SP5, sedangkan dakwaan penipuan oleh perayu dalam kes ini ditujukan kepada perlakuan responden. Apabila semua keterangan dilihat secara menyeluruh, mahkamah mendapati bahawa responden telah memperolehi perintah tersebut seterusnya keseluruhan harta pusaka si mati melalui perbuatan penipuan dengan tujuan semata-mata untuk melucutkan perayu daripada apa yang dia berhak. Oleh itu, mahkamah mendapati perayu telah berjaya membuktikan, atas imbangan kebarangkalian, bahawa perintah tersebut dan harta pusaka si mati diperoleh melalui penipuan oleh pihak responden. Oleh itu, adalah adil untuk perintah tersebut diketepikan (lihat perenggan 44, 46 & 48).]

Cases referred to

Ahmad bin Abd Majeed lwn Habibah bte Abdul Majid dan satu lagi [2007] 3 MLJ 418; [2007] 4 CLJ 355, CA (refd)
Associated Pan Malaysia Cement Sdn Bhd v Westwood Development Sdn Bhd [2014] 7 MLJ 394; [2013] 10 CLJ 95, HC (refd)
Chua Kim Suan v Ang Mek Chong [1988] 3 MLJ 231, HC (folld)
Gan Yook Chin (P) & Anor v Lee Ing Chin @ Lee Teck Seng & Ors [2005] 2 MLJ 1; [2004] 4 CLJ 309, FC (refd)
Henry Devarajah Anthony James v Petrozchem Oilfield Services Sdn Bhd [2017] 1 LNS 2141, HC (refd)
Letchumanan Chettiar Alagappan @ L Allagappan (as executor to SL Alameloo Achi alias Sona Lena Alamelo Acho, deceased) & Anor v Secure Plantation Sdn Bhd [2017] 4 MLJ 697; [2017] 5 CLJ 418, FC (folld)
PP v Datuk Haji Harun bin Haji Idris & Ors [1977] 1 MLJ 180; [1977] 1 LNS 92 (refd)
See Choo @ See Guat Kiok v Suruhanjaya Sekuriti [2006] 1 MLJ 649; [2005] 2 CLJ 20, CA (refd)
Shanta a/p Manickam (suing for herself and her children being the dependants of the deceased Letchumanan a/l Subramaniam) v Teik Joo Chan Sdn Bhd & Anor [2015] 11 MLJ 721; [2015] 8 CLJ 611, HC (refd)
Sinnaiyah & Sons Sdn Bhd v Damai Setia Sdn Bhd [2015] 5 MLJ 1; [2015] 7 CLJ 584, FC (refd)
Tenaga Nasional Bhd v Pearl Island Resort Development Sdn Bhd [2017] MLJU 1193; [2017] 9 CLJ 185, FC (refd)
Tengku Dato' Ibrahim Petra bin Tengku Indra Petra v Petra Perdana Bhd and another appeal [2018] 2 MLJ 177; [2018] 2 CLJ 641, FC (refd)
UEM Group Bhd v Genisys Integrated Engineers Pte Ltd & Anor [2010] MLJU 2225; [2010] 9 CLJ 785, FC (refd)

Legislation referred to

Births and Deaths Registration Act 1957 ss 7(2), 32(1), (2), (2)(b), 33(1), (2), (2)(a), (3), 41(1), Schedule
Births and Deaths Registration Enactment (repealed by Births and Deaths Registration Act 1957)
Evidence Act 1950 s 35
Small Estates (Distribution) Act 1955 s 8
Small Estates (Distribution) Regulations 1955 Form E

Appeal from: Civil Suit No BA-22NCVC–594–10 of 2016 (High Court, Shah Alam)

Ashok K Raman Nair (R Rajasuriyan, Noraizah Bahari and Shopna Rani Malakar with him) (Noraizah Bahari & Assoc) for the appellant.
Pramjit Kaur (Mann & Assoc) for respondent.

Hashim Hamzah JCA:

INTRODUCTION

[1] For ease of reference, the parties to the present appeal shall be referred to as they were in the High Court.

[2] Muniamah a/p Rengasamy was a Malaysian citizen who had died on 29 July 1999 ('the deceased'). During her lifetime, the deceased owned a piece of land measuring approximately five acres (2.0234 hectares) held under GM 969, No Lot 1430, Telok Penyamun, Mukim Pasangan, Daerah Kuala Selangor, Negeri Selangor Darul Ehsan ('the said land') and 22 units of shares in Koperasi Kebangsaan Permodalan Tanah Bhd ('the said shares').

[3] The deceased died intestate. The deceased was allegedly survived by her three sons, namely the plaintiff, the defendant and one Palaniandy. According to the plaintiff and the defendant, Palaniandy had died in India.

[4] After the deceased's death, the defendant, who claimed to be one of the deceased's sons, had lodged a petition dated 8 November 2000 to the land administrator for the distribution of the deceased's estate pursuant to s 8 of the Small Estates (Distribution) Act 1955 (Revised 1972) (Act 98) (' the SEDA 1955').

[5] On 19 March 2001, the land administrator proceeded with the hearing of the defendant's petition. The land administrator who heard the defendant's petition was Hj Mohd Yusof bin Mohd Tahar ('SP5'). At the conclusion of the hearing, SP5 ordered the deceased's estate to be distributed solely to the defendant, as can be seen in Form E dated 19 March 2001 ('the said order').

[6] The plaintiff is domiciled in India. He did not attend the hearing of the defendant's petition before the land administrator. It was evident during the trial that the plaintiff was not notified of the date of the hearing by both the defendant and the land administrator.

[7] Pursuant to the said order, the said land has been transmitted to the defendant on 5 March 2006. The defendant is currently the sole registered owner of the said land.

[8] The plaintiff then initiated this action against the defendant through his son, Ganesan a/l Karuppiah ('SP3') by way of a power of attorney dated 15 September 2016.

[9] In the first instance, the plaintiff claimed that he is entitled to half of the deceased's estate, which has been wholly obtained by the defendant allegedly through fraud. In the midst of the trial before the High Court, the status of the defendant as one of the deceased's sons was disputed by the plaintiff.

[10] After the sixth witness for the plaintiff finished giving her evidence, the plaintiff applied to the High Court to amend his statement of claim. The plaintiff claimed to have only known that the defendant was not the son of the deceased through a recent search with the National Registration Department ('NRD'). The application was dismissed by the learned trial judge and the plaintiff appealed to the Court of Appeal. The Court of Appeal allowed the plaintiff's appeal hence the amendment to the plaintiff's statement of claim was allowed.

[11] Under para 18 of the plaintiff's amended statement of claim, the plaintiff claimed for the following reliefs and we quote:

a) deklarasi bahawa Plaintif merupakan waris yang sah kepada Si Mati (Muniamah alp Rengasamy) yang berhak untuk keseluruhan bahagian Harta Pusaka Si Mati;

b) deklarasi bahawa Perintah Bagi Pembahagian ke atas Guaman Pembahagian No. HPKS283/2000 Tahun 2000 dalam Akta Harta Pusaka Kecil (Pembahagian) 1955 yang dikeluarkan oleh Pentadbir Tanah, Pejabat Tanah Daerah Kuala Selangor pada 19hb Mac 2001 adalah diperolehi secara tidak teratur, tidak sah dan patut diketepikan;

c) perintah bahawa turun milik harta pesaka bagi Hartanah tersebut yang dikenali sebagai GM969, No. Lot 1430 Telok Penyamun, Mukim Pasangan, Daerah Kuala Selangor, Negeri Selangor Darul Ehsan kepada Defendan melalui Nombor Perserahan 189/2006 yang didaftarkan pada 5hb Mac 2006 dibatalkan oleh Pentadbir Tanah, Pejabat Tanah Daerah Kuala Selangor;

d) perintah bahawa Pentadbir Tanah, Pejabat Tanah Daerah Kuala Selangor mendaftarkan keseluruhan hartanah yang dikenali sebagai GM969, No. Lot 1430 Telok Penyamun, Mukim Pasangan, Daerah Kuala Selangor, Negeri Selangor Darul Ehsan kepada Plaintif,

e) perintah bahawa dalam masa empat belas (14) hari daripada tarikh perintah ini diberikan, Defendan melaksanakan segala dokumen yang dibekalkan oleh peguamcara Plaintif iaitu Tetuan Noraizah Bahari & Associates berkenaan dengan pendaftaran Hartanah tersebut yang dikenali sebagai GM969, No. Lot 1430 Telok Penyamun, Mukim Pasangan, Daerah Kuala Selangor, Negeri Selangor Darul Ehsan (secara sama rata) dan jika gagal, Timbalan Pendaftar Mahkamah Tinggi diberi kuasa untuk menandatangani semua dokumen berkenaan bagi pihak Defendan;

f) perintah bahawa kesemua kaveat persendirian dan/atau kaveat pendaftar (sekiranya ada), kecuali kaveat persendirian yang dimasukkan oleh Penerima Kuasa, dibatalkan oleh Pentadbir-Pendaftar Tanah Daerah Kuala Selangor;

g) suatu injunksi diberikan oleh Mahkamah Yang Mulia ini bahawa Defendan menyerahkan Suratan Hakmilik Asal Hartanah tersebut kepada Mahkamah Yang Mulia ini sehingga pelupusan kes ini;

h) peguamcara Plaintif, Tetuan Noraizah Bahari & Associates bertanggungjawab memegang salinan asal suratan hakmilik bagi Hartanah tersebut untuk menguruskan pendaftaran Plaintif sebagai pemilik keseluruhan bahagian Hartanah tersebut;

i) perintah bahawa Defendan mengembalikan keseluruhan Saham tersebut yang berada dalam milikan Defendan dan Plaintif berhak untuk mendapatkan keseluruhan bahagian daripada hasil jualan Saham tersebut sekiranya Saham tersebut telah dijual oleh Defendan;

j) gantirugi sebanyak RM412,000.00;

k) faedah pada kadar 5% setahun ke atas jumlah RM412,000.00 dari tarikh Writ Saman ini sehingga penyelesaian penuh;

l) bahawa kos tindakan dan kos-kos berkaitan ini dibayar oleh Defendan kepada Plaintif; dan

m) sebarang relif yang Mahkamah yang Mulia ini anggap patut dan sesuai untuk diberikan.

[12] The matter went for a full trial before the High Court. Seven witnesses gave evidence for the plaintiff and three witnesses gave evidence for the defendant. On 8 July 2020, after full trial, the learned trial judge dismissed the plaintiff's claim with costs of RM40,000. Dissatisfied, the plaintiff filed this appeal against the said decision.

THE LAW ON APPELLATE INTERVENTION

[13] Steve Shim CJ (Sabah and Sarawak) in delivering the judgment of the Federal Court in *Gan Yook Chin (P) & Anor v Lee Ing Chin @ Lee Teck Seng & Ors* [2005] 2 MLJ 1; [2004] 4 CLJ 309 held:

> In our view, the Court of Appeal in citing these cases had clearly borne in mind the *central feature of appellate intervention ie to determine whether or not the trial court had arrived at its decision or finding correctly on the basis of the relevant law and/or the established evidence*. In so doing, the Court of Appeal was *perfectly entitled to examine the process of evaluation of the evidence by the trial court*. Clearly, the phrase 'insufficient judicial appreciation of evidence' merely related to such a process. This is reflected in the Court of Appeal's restatement that a judge who was required to adjudicate upon a dispute must arrive at his decision on an issue of fact by assessing, weighing and for good reasons, either accepting or rejecting the whole or any part of

the evidence placed before him. The Court of Appeal further reiterated the principle central to appellate intervention ie that *a decision arrived at by a trial court without judicial appreciation of the evidence might be set aside on appeal. This is consistent with the established plainly wrong test.*(Emphasis added.)

[14] In another Federal Court case of *UEM Group Bhd v Genisys Integrated Engineers Pte Ltd & Anor* [2010] MLJU 2225; [2010] 9 CLJ 785, Raus Sharif FCJ, in delivering the judgment of the court held:

[26] Thus, the prime issue in respect of questions 1 to 3 is whether the Court of Appeal had erred in interfering with the findings of facts of the trial judge. *It is well settled law that an appellate court will not generally speaking, intervene with the decision of a trial court unless the trial court is shown to be plainly wrong in arriving at its decision. A plainly wrong decision happens when the trial court is guilty of no or insufficient judicial appreciation of evidence* (see *Chow Yee Wah & Anor v Choo Ah Pat* [1978] 2 MLJ 41b; [1978] 1 LNS 32; *Watt or Thomas Appellant and Thomas Respondent* [1947] AC 484; and *Gan Yook Chin (P) & Anor v Lee Ing Chin @ Lee Teck Seng & Ors* [2005] 2 MLJ 1; [2004] 4 CLJ 309). (Emphasis added.)

[15] On a similar note, the Federal Court in *Tengku Dato' Ibrahim Petra bin Tengku Indra Petra v Petra Perdana Bhd and another appeal* [2018] 2 MLJ 177; [2018] 2 CLJ 641 per Azahar Mohamed FCJ held:

[94] *The law is clear and well settled in that the principle on which an appellate court could interfere with findings of fact by the trial court is 'the plainly wrong test' principle;* see the Federal Court in *Gan Yook Chin (P) & Anor v Lee Ing Chin @ Lee Teck Seng & Ors* [2005] 2 MLJ 1; [2004] 4 CLJ 309, *UEM Group Bhd v Genisys Integrated Engineers Pte Ltd & Anor* [2010] MLJU 2225; [2010] 9 CLJ 785, *In re B (A Child) (Care Proceedings: Threshold Criteria)* [2013] 1 WLR 1911; and *Dream Property Sdn Bhd v Atlas Housing Sdn Bhd* [2015] 2 MLJ 441; [2015] 2 CLJ 453). This court has said this before, and we adhere to it now. Having regard to the above principle, we find that in the present case the Court of Appeal made no findings that the High Court had gone plainly wrong, let alone that on a reconsideration. (Emphasis added.)

[16] Bearing in mind the above position of the law, we now turn to consider the issues raised by both parties to the present appeal.

ISSUES

[17] The issues raised by the plaintiff in the present appeal can be summarised as follows:

(a) whether the learned trial judge had erred both in law and in fact when he did not admit the defendant's certificate of birth issued by the NRD ('ID22') and convert it into court exh P22; and

(b) whether the learned trial judge had erred both in law and in fact when he

found that the said order was not obtained through fraud and therefore not liable to be set aside.

ANALYSIS AND FINDINGS

First issue: Admissibility of the defendant's certificate of birth (ID22)

[18] With regard to this issue, the plaintiff submitted that the learned trial judge had erred both in law and in fact when he did not admit ID22 as a court exh and convert the same into exh P22.

[19] Based on the notes of evidence, ID22 was introduced by the plaintiff through Puan Farihah bt Othman, an assistant registration officer from the NRD, Putrajaya ('SP7'). It can be seen from the notes of evidence that the defendant had objected to the admission of ID22, and the learned trial judge had ordered for further submission on its admissibility. Be that as it may, the issue on the admissibility of ID22 was not addressed by the learned trial judge in his grounds of judgment. There was also no record to show that ID22 has been admitted as a court exhibit and converted to P22. As such, ID22 remains as an ID document.

[20] It has been a long established practice of the Malaysian courts that a document marked as ID is a document which has been put for identification purposes only. As such, an ID document is not considered as a properly admitted exhibit and does not form part of the evidence for the court's consideration. It naturally follows that any evidence or testimony with regard to the said ID document shall not be relied upon by the court and ought to be disregarded as well (see *Shanta a/p Manickam (suing for herself and her children being the dependants of the deceased Letchumanan a/l Subramaniam) v Teik Joo Chan Sdn Bhd & Anor* [2015] 11 MLJ 721; [2015] 8 CLJ 611, *Henry Devarajah Anthony James v. Petrozchem Oilfield Services Sdn Bhd* [2017] 1 LNS 2141 (HC), *Public Prosecutor v Datuk Haji Harun Haji ldris & Ors* [1977] 1 MLJ 180; [1977] 1 LNS 92 (HC) and *Associated Pan Malaysia Cement Sdn Bhd v Westwood Development Sdn Bhd* [2014] 7 MLJ 394; [2013] 10 CLJ 95 (HC)).

[21] ID22 is the defendant's certificate of birth which was issued by the NRD upon application made by the plaintiff. The Births and Deaths Registration Act 1957 (Revised 1983) (Act 299) ('the BORA 1957') generally allows for any person to apply for a certificate of birth pertaining to any entry in the register upon payment of the prescribed fee. Section 32(1) of the BORA 1957 reads:

> *Any person may apply* from the Superintendent-Registrar on the prescribed form a *Certificate of Birth*, Certificate of Death or Certificate of Presumed Death *pertaining*

to any entry in the register on payment of such fees as may be prescribed. (Emphasis added.)

[22] As stated in ID22, the date of the extraction of ID22 was 30 October 2018. ID22 was duly certified by the Registrar-General of Births and Deaths as a true extract from the register of births. ID22 thus satisfies the statutory requirement under s 32(2) of the BORA 1957, which reads:

Every Certificate of Birth, Certificate of Death or Certificate of Presumed Death shall be certified under the hand of the Registrar or *the Registrar-General* or the Superintendent-Registrar *having the custody of the register.* (Emphasis added.)

[23] Upon being duly certified under s 32(2) of the BORA 1957, ID22 is deemed under the law to be a certified copy, notwithstanding that it may be photographically reproduced or in a form different than which the original entry was made. Section 33(3) of the BORA 1957 states:

For the purposes of this section a *Certificate of Birth,* Certificate of Death or Certificate of Presumed Death *shall be deemed to be a certified copy* if it purports to *have been certified in accordance with subsection 32(2) notwithstanding* that it may be-

(a) *photographically reproduced;* or

(b) an extract of the information contained in the register in a *form prescribed which form may be different from that in which the original entry was made.* (Emphasis added.)

[24] Therefore, ID22 which has been duly certified under s 32(2) of the BORA 1957 shall be received as evidence of such facts and particulars relating to such birth without further or other proof. Section 33(1) of the BORA 1957 provides that:

Subject to the provisions of this section an entry or a *Certificate of Birth,* Certificate of Death or Certificate of Presumed Death relating thereto purporting to *have been duly certified under subsection 32(2) shall be received without further or other proof as evidence of such facts and particulars relating to such birth,* death or presumed death as are or were at the time of the making of such entry required by law to be set forth in such entry or certificate. (Emphasis added.)

[25] The application of s 33(1) is subject to the fulfilment of any of the provisos under s 33(2) of the BORA 1957, which reads:

(2) An entry in a register or *a Certificate of Birth,* Certificate of Death or Certificate of Presumed Death relating thereto, *shall not be received as evidence under this section unless —*

(a) the entry purports to be signed by some person professing to be the informant and to be such a person as might be required by law at the date of the entry to give to the Registrar information concerning that birth or death; or

A (b) *the entry is an entry of a birth which is signed by a person professing to be a Superintendent-Registrar, or which purports to have been made with the authority of the Registrar-General;* or

(c) the entry is an entry of a death which purports to have been made upon a certificate from a Coroner or Magistrate; or

B (ca) the entry is an entry of presumed death which has been made upon receiving an order from a Court; or

(d) the entry purports to have been made in pursuance of any written law relating to the registration of births and deaths at sea or on board an aircraft, or

C (e) the entry is —

(i) an entry in any register, book of record or document recording particulars of births and deaths which has been kept or preserved under or in accordance with the provisions of any former written law relating to the

D registration of births and deaths; and

(ii) such entry or a certified copy of such entry would immediately before the coming into force of this Act have been received as evidence of the facts or particulars in respect of which such entry or certified copy is produced as evidence. (Emphasis added.)

E

[26] The word 'or' appearing in s 33(2) of the BORA 1957 denotes that those words have to be read disjunctively (see *Tenaga Nasional Bhd v Pearl Island Resort Development Sdn Bhd* [2017] MLJU 1193; [2017] 9 CLJ 185 (FC) and *See Choo @ See Guat Kiok v Suruhanjaya Sekuriti* [2006] 1 MLJ 649; [2005] 2 CLJ 20 (CA)).

F

[27] In addition to the above, ID22 contains relevant facts which purportedly support the plaintiff's assertion that the defendant was not the son

G of the deceased. The admissibility of non-judicial public documents is governed by, inter alia, s 35 of the Evidence Act 1950 (Act 56) ('the EA 1950'), which states:

H *An entry in any public or other official book, register or record, stating a fact in issue* and *made by a public servant in the discharge of his official duty* or by any other person in performance of a duty specially enjoined by the law of the country in which the book, register or record is kept, is *itself a relevant fact.* (Emphasis added.)

[28] We find that ID22 in the present case satisfies both the provision under

I ss 32(1) and 32(2)(b) of the BORA 1957. ID22 is also relevant to address the issue of whether the defendant is the son of the deceased pursuant to s 35 of the EA 1950. Therefore, we find that ID22 is relevant and admissible as evidence of such facts and particulars relating to the defendant's birth.

[29] On the other hand, the defendant contended that the plaintiff's reliance on ID22 cannot be accepted by the court since the BORA 1957 is not applicable to the facts in the present case. According to the defendant, the entry of the defendant's birth was made in 1943, prior to the commencement of the BORA 1957.

[30] We disagree with the defendant's contention for the foregoing reasons.

[31] The BORA 1957 first came into force on 1 August 1958 through Ordinance No 61 of 1957 and was later revised in 1983. There were laws on registration of births and deaths prior to the coming into operation of the BORA 1957, which have been repealed therefrom. The repealed laws are listed in the Schedule to the BORA 1957 which includes the Births and Deaths Registration Enactment (FMS Cap 190) which was in force prior to the BORA 1957. The information given and the registration of the defendant's birth was made in 1943, at the time when the Births and Deaths Registration Enactment (FMS Cap 190) was in force.

[32] It is therefore important to look into any savings or transitional provision in the BORA 1957 to address this issue. The savings provision under s 41(1) of the BORA 1957 states that:

> *any* certificate issued or any notice or *information given* or any order, regulation or return made *or any registration effected* or other thing done under or *in accordance* with any *former written law relating to the registration of births and deaths shall* if in force at the commencement of this Act, *continue in force,* and *shall have effect as if the same had been issued, given, made effected or done under the corresponding provision of this Act.* (Emphasis added.)

[33] In light of the above, we are of the view that the information given and the registration of the defendant's birth continue to be in force as if they had been given or registered in accordance with the BORA 1957. It is pertinent to note that ID22 was issued based on the register of births, which contained the said information and registration. ID22 was also issued and extracted on 30 October 2018 under the provisions of the BORA 1957. Therefore, we are of the considered view that the provisions under the BORA 1957 are applicable to ID22.

[34] Next, it was further contended by the defendant that by virtue of ss 7(2) and 33(2)(a) of the BORA 1957, the plaintiff bears the burden to produce an entry signed by one Chinaya a/l Ranggasamy (the informer of the defendant's birth as can be seen in ID22) and to show whether he was legally entitled to produce the information of the defendant's birth for registration.

[35] With regard to this contention, we have already mentioned before that ID22 has already satisfied the requirements on its admissibility and it should have been admitted as evidence based on s 32(1) and 32(2)(b) of the BORA 1957 above. Thus, there is no further need for the plaintiff to produce an entry signed by the informer of the defendant's birth. Therefore, we disagree with the defendant's contention on this issue.

[36] Once admitted, the defendant's certificate of birth serves as strong presumptive evidence before the court that the defendant is not the son of the deceased. In order to disprove this presumptive evidence, it is insufficient for the defendant to merely rely on the admissions and assertions of the witnesses during the trial.

[37] On this issue, we approve the judgment of KC Vohrah J (as he then was) in *Chua Kim Suan v Ang Mek Chong* [1988] 3 MLJ 231, who observed as follows:

> It will be noted that under s 36 of the 1957 Ordinance (and it remains unchanged in the 1957 Act) a penalty was provided, inter alia: (a) for making any false statement for the purpose of registration; (b) for furnishing false information touching on any particulars required by the Act; and (c) for making a false entry in a register. *To my mind, one can expect that the particulars given to a public officer under the law for the registration of births by an informant, in view of the penalty, would be true.* And in addition, the entries in the certificate being a reflection of the entries in the register of birth, *there is a presumption of correctness attaching to these entries and it is up to the party disputing the correctness to come up with contrary evidence.*
>
> Amongst the entries in the certificate of birth are those relating to the date of birth, sex and place of birth of the child, the name of the child's father, the name of the child's mother and her age. Pang Hua's certificate of birth gives the name of his father as 'Tiu Jock Soon', ie the deceased was his father. The mother's name is given as 'Ang Mok Chang', ie the defendant is his mother. And the age of the defendant then was given as '42 years'. *To my mind, these entries constitute strong presumptive evidence that the deceased and the defendant were parents of Pang Hua* and they corroborated the evidence of the defendant that Pang is the child of the deceased and that she gave birth to him. Indeed, these entries show that DW3 and DW4 are not Pang Hua's parents. *It would certainly need more than mere assertions by the plaintiff and her witnesses to disprove that Pang Hua is not the child of the deceased and the defendant.* (Emphasis added.)

[38] Therefore, based on all of the above, we agree with the plaintiff that the defendant has no interest in the deceased's estate. As such, the defendant has no locus standi to petition for the distribution of the deceased's estate under s 8 of the SEDA 1955 in the first place.

[39] In a nutshell, there is clearly a misdirection on the part of the learned trial judge in not admitting the defendant's certificate of birth as a court exhibit

and converting it from ID22 to P22. In our view, the decision of the learned trial judge, with due respect, was not based on a proper judicial appreciation of evidence and was plainly wrong. In our view, there is no reason for this court not to accept ID22, a document introduced and tendered by an assistant registration officer from the NRD, as a court exhibit. In our view, the misdirection of the trial judge warrants appellate intervention by this court.

Second issue: Fraud

[40] With regard to this issue, the plaintiff submitted that the learned trial judge had erred both in law and in fact when he found that the said order was not obtained through fraud and therefore not liable to be set aside.

[41] On the issue of fraud, the learned trial judge in his grounds of judgment, made the following observations:

> [27] SP5 yang mendengar permohonan yang dibuat defendan mempunyai budibicara penuh untuk meneruskan atau menangguhkan perbicaraan kerana plaintif yang berada di India tidak hadir. SP5 sendiri menyedari kelayakan plaintif untuk mendapat bahagian dari harta pusaka ini. Dari keterangan yang dikemukakan adalah jelas SP5 telah membuat keputusan untuk meneruskan perbicaraan dan seterusnya membuat perintah terhadap permohonan yang dibuat oleh defendan, walaupun plaintif tidak hadir. Tidak ada keterangan yang jelas yang menunjukkan bahawa keputusan yang dibuat oleh SP5 untuk menurun milik hartanah tersebut kepada defendan telah dipengaruhi oleh frod yang dilakukan oleh defendan. Oleh itu saya dapati tidak ada asas untuk membuat deklarasi bahawa perintah tersebut dibuat secara tidak teratur, tidak sah dan patut diketepikan.

[42] On what constitutes fraud, we are guided by the judgment of the Federal Court in *Letchumanan Chettiar Alagappan @ L Allagappan (as executor to SL Alameloo Achi alias Sona Lena Alamelo Acho, deceased) & Anor v Secure Plantation Sdn Bhd* [2017] 4 MLJ 697; [2017] 5 CLJ 418 where Jeffrey Tan FCJ in delivering the judgment of the court held:

> [18] *What amounts to 'fraud'?* 'It is not easy to give a definition of what constitutes fraud in the extensive signification in which the term is understood by civil courts of justice. The courts have always avoided hampering themselves by defining or laying down as a general proposition what shall constitute fraud. Fraud is infinite in variety (*Reddaway v Banham* [1896] AC 199 221). The fertility of man's invention in devising new schemes of fraud is so great, that the courts have always declined to define it, or to define undue influence, which is one of the many varieties, reserving to themselves the liberty to deal with it under whatever form it may present itself (*Allcard v Skinner* [1887] 36 Ch D 145, 183*). Fraud, in the contemplation of a civil court of justice, may be said to include properly all acts, omissions, and concealments which involve a breach of a legal or equitable duty, trust or confidence, justly reposed, and are injurious to another, or by which an undue or unconscientious advantage is taken of another* (Story, Eq Jur 187). All surprise, trick, cunning, dissembling and other unfair way that is used to cheat anyone is considered fraud (Finch 439). *Fraud in all*

cases implies a wilful act on the part of anyone, whereby another is sought to be deprived, by illegal or inequitable means, of what he is entitled to (*Green v Nixon* [1857] 23 Beav 530, 535) (Kerr on *Fraud and Mistake* (7th Ed) at p 1). 'The concept of fraud is notoriously difficult to define' (*Cavell and Anor v Seaton Insurance Co* [2009] EWCA Civ 1363 per Longmore LJ, Mummery and Toulson LJJ in agreement). We would not hazard to define 'fraud'. *We would just say that 'fraud' is a generic term which also covers all manner of cheat, deceit and dishonesty.* Given its wide meaning, 'an action in fraud will usually include a number of distinct causes of action ... ' and 'claims to trace assets in equity or perhaps, at common law' (Bullen & Leake & Jacobs *Precedents of Pleadings* (18th Ed) vol 2 at 57-01). (Emphasis added.)

[43] With regard to the standard of proof in civil cases, the standard of proof is on the balance of probabilities, even when fraud is the subject in the said civil claim (see *Sinnaiyah & Sons Sdn Bhd v Damai Setia Sdn Bhd* [2015] 5 MLJ 1; [2015] 7 CLJ 584 (FC)).

[44] As can be gleaned from the learned trial judge's grounds of judgment, too much focus was given to the acts of the land administrator, ie SP5, whereas the allegation of fraud by the plaintiff in the present case was directed to the specific acts of the defendant.

[45] Oral and documentary evidence were adduced by the plaintiff which proved that:

(a) the defendant is not the son of the deceased and he did not disclose his certificate of birth during the hearing before the land administrator;

(b) the defendant admitted that he purposefully did not inform either the plaintiff or the plaintiff's son, ie SP3, about the hearing of the petition before the land administrator;

(c) during the hearing of the petition, when the land administrator stated that the deceased's estate should be divided equally between the plaintiff and the defendant, the defendant specifically requested for the whole of the deceased's estate to be distributed to him;

(d) one of the grounds of the defendant's application was that the plaintiff had consented to the deceased's estate being distributed solely to the defendant, which was strenuously denied by the plaintiff;

(e) the land administrator made an order for the defendant to submit a 'Surat Akuan Penolakan Bersumpah' by the plaintiff before the said order may be extracted; and

(f) the defendant never complied with the said order and yet he proceeded with the transmission of the deceased's estate to his name.

[46] When all of the evidence above are viewed in totality, we find that the defendant had clearly obtained the said order and subsequently the whole of the deceased's estate through fraudulent acts with the sole purpose of depriving the plaintiff of what he was duly entitled to.

[47] In the Court of Appeal case of *Ahmad bin Abd Majeed lwn Habibah bte Abdul Majid dan satu lagi* [2007] 3 MLJ 418; [2007] 4 CLJ 355, the court has allowed the plaintiff's application to set aside the distribution order on the ground of fraud. Mokhtar Sidin JCA observed that the wilful failure of the defendant to name the plaintiff in the petition for the distribution of the estate, and the concealment of the fact regarding the filing and hearing of the petition from the plaintiff with the purpose of denying the plaintiff of his rightful interest over the estate, among others, amounted to fraud. In such circumstances, the distribution order is liable to be set aside. In particular, the following passage of the judgment is reproduced below:

> [20] Di dalam rayuan ini saya berpendapat bahawa peruntukan s 29 Akta tersebut tidak terpakai. Pertama, *plaintif bukanlah suatu pihak yang telah dinamakan oleh defendan* semasa defendan membuat permohonan untuk pembahagian harta pesaka simati sungguhpun defendan tahu bahawa plaintif adalah waris yang paling berhak ke atas harta pesaka si mati. *Ini bukanlah satu kesilapan tetapi satu perbuatan yang sengaja dilakukan oleh defendan untuk mengenepikan hak plaintif sebagai seorang waris.* Apabila defendan menamakan abang si mati sebagai waris dan bukannya plaintif (anak lelaki si mati), *ini pada pendapat saya adalah satu perbuatan penipuan (fraud) yang sengaja dilakukan oleh defendan untuk mengenepikan hak plaintif ke atas harta pesaka si mati.* Pada pendapat saya, mengikut hukum syarak apabila si mati meninggalkan seorang anak lelaki maka abang atau adik lelaki si mati tidak mempunyai apa-apa hak ke atas harta pesaka si mati. Di dalam kes ini, bukan sahaja defendan telah melakukan penipuan tetapi juga abang si mati yang telah membuat pengakuan yang si mati tidak mempunyai anak lelaki dan dia adalah pewaris dan seterusnya dia melepasnya sebagai pewaris. Pentadbir tanah telah memberikan perintah berasaskan dokumen-dokumen yang palsu itu. Dengan itu, perintah yang dibuat berasaskan surat-surat palsu tersebut adalah tidak sah dan terbatal.
>
> [21] Keduanya, *apabila defendan memohon untuk membuat pembahagian harta si mati mereka tidak ada memberitahu plaintif dan defendan tidak menafikan perkara ini* tetapi cuba mencari alasan bahawa plaintif telah mendapat pembahagian harta pesaka arwah bapa mereka.
>
> Pada pendapat saya, itu bukanlah satu alasan yang kukuh. Plaintif sememangnya berhak ke atas harta pesaka itu bersama-sama dengan ibunya (si mati). Walau apapun, alasan yang telah diberikan oleh responden, ia bukanlah satu sebab untuk tidak memberitahu plaintif ke atas permohonan pembahagian harta pesaka si mati. *lni juga pada pendapat saya satu sebab mengapa perintah pembahagian oleh pentadbir tanah adalah tidak sah dan terbatal.*
>
> [22] Ketiga, *plaintif tidak tahu-menahu langsung berkenaan permohonan dan pembahagian harta pesaka si mati, sehinggalah beberapa tahun kemudian.* Dari keterangan yang ada, defendan sendiri telah menyembunyikan semua itu dari pengetahuan plaintif. Apabila plaintif mendapat tahu bahawa pembahagian harta

pesaka tersebut telah dibuat beberapa tahun kemudian, tarikh untuk membuat rayuan telah luput. Plaintif hanya boleh memohon untuk mengenepikan perintah dan ini telah dilakukan oleh plaintif dengan secepat mungkin apabila mengetahui berkenaan perintah tersebut. Mengikut peruntukan s 29 Akta tersebut had memfailkan rayuan adalah satu bulan selepas perintah diberikan iaitu mengikut peruntukan di dalam Kaedah-kaedah Mahkamah Rendah.

[23] Keempat, semasa perbicaraan pembahagian harta pesaka si mati dijalankan di pejabat pentadbir tanah, *plaintif bukan sahaja tidak hadir tetapi yang paling jelas ia tidak diberitahu langsung berkenaan perbicaraan tersebut.* Dengan itu, saya berpendapat s 29 Akta tersebut tidak terpakai ke atas pfaintif di dalam kes ini. (Emphasis added.)

[48] Therefore, based on the above, we find that the plaintiff had successfully proven, on the balance of probabilities, that the said order and the deceased's estate were obtained through fraud on the part of the defendant. Therefore, it is only just for the said order to be set aside.

CONCLUSION

[49] In conclusion, for reasons enumerated above, we have come to a unanimous decision that there is merit in the plaintiff's appeal. It is hereby ordered as follows:

(a) the plaintiff's (appellant's) appeal is allowed and the High Court's decision is set aside;

(b) the plaintiff's (appellant's) reliefs in prayer 18 of the amended statement of claim is allowed;

(c) costs of RM50,000 here and below to be paid by the defendant (respondent) to the plaintiff (appellant);

(d) security for costs of RM10,000 deposited by the plaintiff (appellant) to the defendant (respondent) to be released to the plaintiff (appellant) within 14 days from the date of this order; and

(e) the title of the said land is to be given to the plaintiff's (appellant's) solicitors within 14 days from the date of this order.

Appeal allowed with costs.

Reported by Rafinie Ramli